



Guidance Manual

for
Monitoring Facilities
Under the Juvenile Justice
and
Delinquency Prevention
Act of 2002

Preface

The purpose of this manual is to assist states in monitoring for compliance with three of the four core protections of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002. The three core protections addressed in this manual are deinstitutionalization of status offenders, removal of juveniles from adult jails and lockups, and separating adult offenders from juveniles in institutions. The fourth core protection, disproportionate minority confinement, has a separate manual, *Disproportionate Minority Confinement Technical Assistance Manual*, which was published in April 2000.

This manual was updated and revised in September 2003 to comply with the Juvenile Justice and Delinquency Prevention Act of 2002, which took effect on October 1, 2003.

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Table of Contents

Section 1: Background of the Juvenile Justice and Delinquency Prevention Act	1
1.1 Deinstitutionalization of Status Offenders (DSO)	2
1.2 Separation of Juveniles From Adult Offenders (Separation)	2
1.3 Removal of Juveniles From Adult Jails and Lockups (Jail Removal)	3
1.4 Reduction of Disproportionate Minority Confinement (DMC)	4
Section 2: Monitoring for Compliance: Adult Jails and Lockups	5
2.1 Definitions Related to Adult Jails and Lockups	5
2.2 Definitions of Secure and Nonsecure Custody of Juveniles Held in Adult Jails and Lockups	6
Secure Custody	6
Nonsecure Custody	9
2.3 Compliance With Deinstitutionalization of Status Offenders	10
Prohibition on Secure Holding	10
Youth Handgun Safety Act Exemption	10
Monitoring for Deinstitutionalization of Status Offenders	11
2.4 Compliance With Jail Removal	11
Prohibition and Exceptions to the Secure Holding of Juveniles	11
Six-Hour Hold Exception	11
Removal (Rural) Exception	12
Transfer or Waiver Exception	13
2.5 Compliance With Separation	14
Juveniles Shall Not Have Contact With Adult Inmates	14
Administrative Transfers	14
Transferred or Waived Juveniles	15
2.6 Facility Reporting Requirements	15
Summary of the JJDP Act: Adult Jails and Lockups	17
Section 3: Monitoring for Compliance: Juvenile Facilities	19
3.1 Definitions Related to Juvenile Facilities	19
3.2 Compliance With Deinstitutionalization of Status Offenders	20
Secure Holding of Status Offenders—Prohibitions and Exceptions	20
Youth Handgun Safety Act Exemption	21
Out-of-State Runaways	21
Federal Wards	21
Exception for Status Offenders Who Violate a Valid Court Order (VCO Exception)	22
3.3 Compliance With Jail Removal	23
3.4 Compliance With Separation	23
Transferred, Waived, or Certified Youth	24
Adults Under the Jurisdiction of the Juvenile Court	24
3.5 Facility Reporting Requirements	24
Summary of the JJDP Act: Juvenile Detention or Correctional Facilities	26

Section 4: Monitoring for Compliance: Other Facilities	27
4.1 Collocated Facilities	27
Classifying Facilities	27
Definitions of Collocated Facilities and Related Complex of Buildings	27
Criteria for Collocated Facilities	27
Annual Onsite Review Requirement	28
Collocated Facility Reporting Requirement	29
4.2 Court Holding Facilities	29
4.3 Adult Prisons	30
Status Offenders	30
Delinquent Offenders	30
Transferred, Waived, or Certified Youth	30
4.4 Nonsecure Community-Based Programs and Facilities	30
4.5 Secure Mental Health Treatment Units	31
Summary of the JJDP Act: Other Facilities	32
 Section 5: State Monitoring of Facilities	 33
5.1 Adequate System of Monitoring for Compliance	33
5.2 Native American Tribes	34
Monitoring Facilities on Native American Reservations	34
Grants to Native American Tribes	34
5.3 Out-of-State Juveniles	35
5.4 Enforcement Mechanism	35
 Section 6: Reporting Requirements	 37
6.1 Annual Compliance Monitoring Report Requirement	37
6.2 Deadline To Submit Annual Report	37
6.3 Reporting Requirements	38
Deinstitutionalization of Status Offenders	38
Jail Removal	38
Separation	40
6.4 Technical Assistance Reporting Tools	41
Paper Format	41
Spreadsheet Format	41
6.5 Monitoring Report Exemption	42
6.6 Annual Report to the Governor and Legislature	42
 Section 7: Standards for Demonstrating Compliance	 43
7.1 Grant Funds Affected by Compliance	43
Formula Grant Funds	43
Community Prevention Grant Funds—State Eligibility	43
Community Prevention Grant Funds—Unit of Local Government Eligibility	44
7.2 Deadline for Establishing Eligibility for Formula Grant Funds	44

7.3 Demonstrating Compliance: Deinstitutionalization of Status Offenders	45
Criterion A	45
Criterion B	47
Criterion C	48
7.4 Demonstrating Compliance: Jail Removal	49
Numerical De Minimis Standard	49
Substantive De Minimis Standard	50
7.5 Demonstrating Compliance: Separation	50
Summary of Standards for Demonstrating Compliance	52
Section 8: Definitions	53

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Section 1

Background of the Juvenile Justice and Delinquency Prevention Act

Since its passage in 1974, the Juvenile Justice and Delinquency Prevention (JJDP) Act has changed the way states and communities deal with troubled youth. The original goals of the Act and of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) were simple: to help state and local governments prevent and control juvenile delinquency and to improve the juvenile justice system. These goals were reaffirmed in the reauthorization of the Act in 2002. A second important element in the 1974 Act was to protect juveniles in the juvenile justice system from inappropriate placements and from the harm—both physical and psychological—that can occur as a result of exposure to adult inmates. Yet another important element of the JJDP Act emphasized the need for community-based treatment for juvenile offenders. In passing the JJDP Act, Congress recognized that keeping children in the community is critical to their successful treatment.

The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants¹ under the JJDP Act:

- ◆ Deinstitutionalization of status offenders (DSO).
- ◆ Separation of juveniles from adults in institutions (separation).
- ◆ Removal of juveniles from adult jails and lockups (jail removal).
- ◆ Reduction of disproportionate minority contact (DMC), where it exists.

Meeting the core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act.

Each participating state must develop and implement a strategy for achieving and maintaining compliance with the four core protections as part of its annual Formula Grants State Plan. A state's level of compliance with each of the four core protections determines eligibility for its continued participation in the grant programs. For example, failure to achieve or maintain compliance, despite good faith efforts, reduces the Formula Grant to the state by 20 percent for each core requirement not met. In addition, the noncompliant state must agree to expend 50 percent of the state's allocation for that year to achieve compliance with the core requirement(s) with which it is not in compliance.

¹ Formula Grants and the Title V Community Prevention Grants are the grants that are affected by compliance with the core protections.

As part of the strategy for maintaining compliance, states must provide for an adequate system of monitoring to ensure that the core protections are met. States must visit and collect information from secure facilities to demonstrate compliance with the JJDP Act. On an annual basis, each state submits this information in the form of a Compliance Monitoring Report to OJJDP. The report provides compliance data and a detailed description of how the state is meeting the core protections. The following four sections contain information on each of the core protections.

1.1 Deinstitutionalization of Status Offenders (DSO)

The DSO provision was included in the original JJDP Act. As enacted in 1974, the Act required States to “provide within three years. . . that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult (i.e., status offenders), shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities.”

A 1977 amendment to the JJDP Act expanded the DSO provision to expressly include nonoffenders such as dependent and neglected youth. It also removed the requirement that these juveniles be placed in shelter facilities, allowing state and local governments additional latitude in the placement of status offenders and nonoffenders.

In 1980, Congress specified that status offenders and nonoffenders must be removed from “secure” juvenile detention and correctional facilities. Congress also added a new jail and lockup removal requirement, which prohibits juveniles—including accused and adjudicated delinquents, status offenders, and nonoffenders—from being detained in adult jails and adult lockups. Congress further amended the JJDP Act that year to allow states to detain or confine status offenders in secure juvenile facilities for the violation of a valid court order.

As amended by the JJDP Act of 2002, the DSO requirement currently reads as follows: “juveniles who are charged with or have committed an offense that would not be criminal if committed by an adult—excluding juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar state law; juveniles who are charged with or who have committed a violation of a valid court order; and juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State—shall not be placed in secure detention facilities or secure correctional facilities.” In addition, the 2002 Act states that “juveniles who are not charged with any offense and who are aliens or alleged to be dependent, neglected, or abused shall not be placed in secure detention facilities or secure correctional facilities.”

1.2 Separation of Juveniles From Adult Offenders (Separation)

Since the inception of the juvenile justice system, the practice of incarcerating juveniles with adult inmates has been criticized. The placement of juveniles in institutions where they are mixed with adult inmates is emotionally and physically traumatic, resulting in further victimization.

Moreover, commingling juvenile offenders with adults provides an education in crime and undercuts the intent of a separate juvenile justice system designed to rehabilitate and treat juvenile offenders.

In one of the original provisions of the JJDP Act, Congress sought to provide separation between adult inmates and juveniles in institutional settings such as jails, lockups, prisons, and other secure facilities. The JJDP Act of 2002, as amended, provides that “juveniles alleged to be or found to be delinquent,” as well as status offenders and nonoffenders, “will not be detained or confined in any institution in which they have contact with adult inmates.” The 2002 Act further requires that “there is in effect in the state a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, [to] have been trained and certified to work with juveniles.”

1.3 Removal of Juveniles From Adult Jails and Lockups (Jail Removal)

Although many of the juveniles taken into police custody and referred to the juvenile court can be released to parental custody to await court action, juveniles who have committed serious crimes and are a safety risk to the community may be removed from their homes and placed in secure facilities pending court hearings. Prior to the passage of the jail and lockup removal provision in the JJDP Act, this routinely resulted in placing juveniles in adult jails or lockups in danger of physical or emotional harm from adult prisoners. Research has shown that young people held in adult facilities were sexually assaulted five times more often than youth in juvenile facilities, assaulted by staff twice as often, and assaulted with a weapon 50 percent more often.²

In an effort to protect juveniles in custody and to meet the 1974 separation requirement of the JJDP Act, jail officials sometimes placed juveniles in solitary confinement. This practice aggravated the psychological effects of jailing and, in some cases, lead to suicide. In fact, juveniles in jails are found to commit suicide eight times more often than those in juvenile detention facilities.³ Moreover, young people in adult facilities were being deprived of educational and other services provided in juvenile facilities. For these reasons, Congress amended the JJDP Act in 1980 to include the jail and lockup removal requirement, which states that “no juvenile shall be detained or confined in any jail or lockup for adults,” a requirement reaffirmed in the JJDP Act of 2002.

² Dale Parent et al. , *Conditions of Confinement: Juvenile Detention and Corrections Facilities -Research Summary*, Office of Juvenile Justice and Delinquency Prevention (1994) and Martin Forst, Jeffrey Fagan, and T. Scott Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,” *Juvenile & Family Court Journal*:40(1)(1989).

³ Michael G. Flaherty, *An Assessment of the National Incidence of Juvenile Suicide in Adult Jails, Lockups, and Juvenile Detention Centers*, The University of Illinois, Urbana-Champaign (1980).

The JJDP Act of 2002 provides the following exception: “juveniles who are accused of nonstatus offenses who are detained in such jail and lockup for a period not to exceed 6 hours for processing or release, while awaiting transfer to a juvenile facility, or in which period such juveniles make a court appearance, and only if such juveniles do not have contact with adult inmates.” Under special circumstances, the Act also provides for a “rural” exception of up to 48 hours (excluding Saturdays, Sundays, and legal holidays). (See section 2.4 of this *Guidance Manual* for details.)

1.4 Reduction of Disproportionate Minority Contact (DMC)

In 1988, Congress took note of this problem by focusing state attention on the phenomenon of disproportionate minority confinement in the juvenile justice system. In 1992, Congress required states to address disproportionate minority confinement as a condition for receiving 25 percent of the state’s Formula Grants program allocation, making it the fourth and final core protection of the JJDP Act. The 1992 amendments required states to determine if minority juveniles are disproportionately confined in secure detention and correctional facilities and, if so, to address any features of their juvenile justice systems that may account for the disproportionate confinement of minority juveniles. This core requirement neither required nor established numerical standards or quotas in order for a state to achieve or maintain compliance. Rather, it required states to identify whether minority juveniles are disproportionately detained or confined in secure facilities, provide a complete assessment of why disproportionate minority confinement exists, and provide an intervention plan that seeks to reduce the disproportionate confinement of minority juveniles in secure facilities.

As amended by the JJDP Act of 2002, the concept of disproportionate minority confinement has been broadened to address the disproportionate numbers of minority youth who come into contact with the juvenile justice system at any point. The 2002 Act requires states to “address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system.”

Section 2

Monitoring for Compliance: Adult Jails and Lockups

2.1 Definitions Related to Adult Jails and Lockups

Adult jail. A locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than 1 year.

Adult lockup. Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged.

Collocated facilities. Collocated facilities are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds. (See section 4.)

Related complex of buildings. A related complex of buildings is two or more buildings that share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc.

Status offender. A status offender is a juvenile who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- ◆ Truancy.
- ◆ Violations of curfew.
- ◆ Runaway.
- ◆ Underage possession and/or consumption of tobacco products.

- ◆ Underage alcohol offenses. These offenses are considered status offenses, even though state or local law may consider them delinquent offenses.⁴

Nonoffender. A nonoffender is a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Civil-type juvenile offender. A civil-type juvenile offender is a juvenile who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

2.2 Definitions of Secure and Nonsecure Custody of Juveniles Held in Adult Jails and Lockups

Secure Custody

As used to define a detention or correctional facility, this term includes residential facilities having construction features designed to physically restrict the movements and activities of persons in custody (e.g., locked rooms and buildings, fences, or other physical structures). It does not include facilities where physical restriction of movement or activity is provided solely through facility staff (i.e., staff secure).

Further guidance in distinguishing nonsecure custody from secure custody comes from the November 2, 1988, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy*. The policy states that a secure detention or confinement status has occurred within a jail or lockup facility when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell that is designated, set aside, or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or enclosure and/or from being physically secured to a cuffing rail or other stationary object.

Also considered secure are those facilities that contain doors with delayed egress devices that have not received written approval by the authority having jurisdiction over fire codes and/or fire

⁴ With regard to underage alcohol offenses, in many states it is a criminal offense for any person 18 to 20 years old to consume or possess alcoholic beverages. Because this time period is limited (i.e., 3 years) and the age at which this is not a criminal offense is very broad (i.e., after the age of 21), these alcohol offenses must be classified as status offenses if committed by a juvenile. However, criminal alcohol offenses that apply to all adults (e.g., public intoxication) may be classified as delinquent offenses.

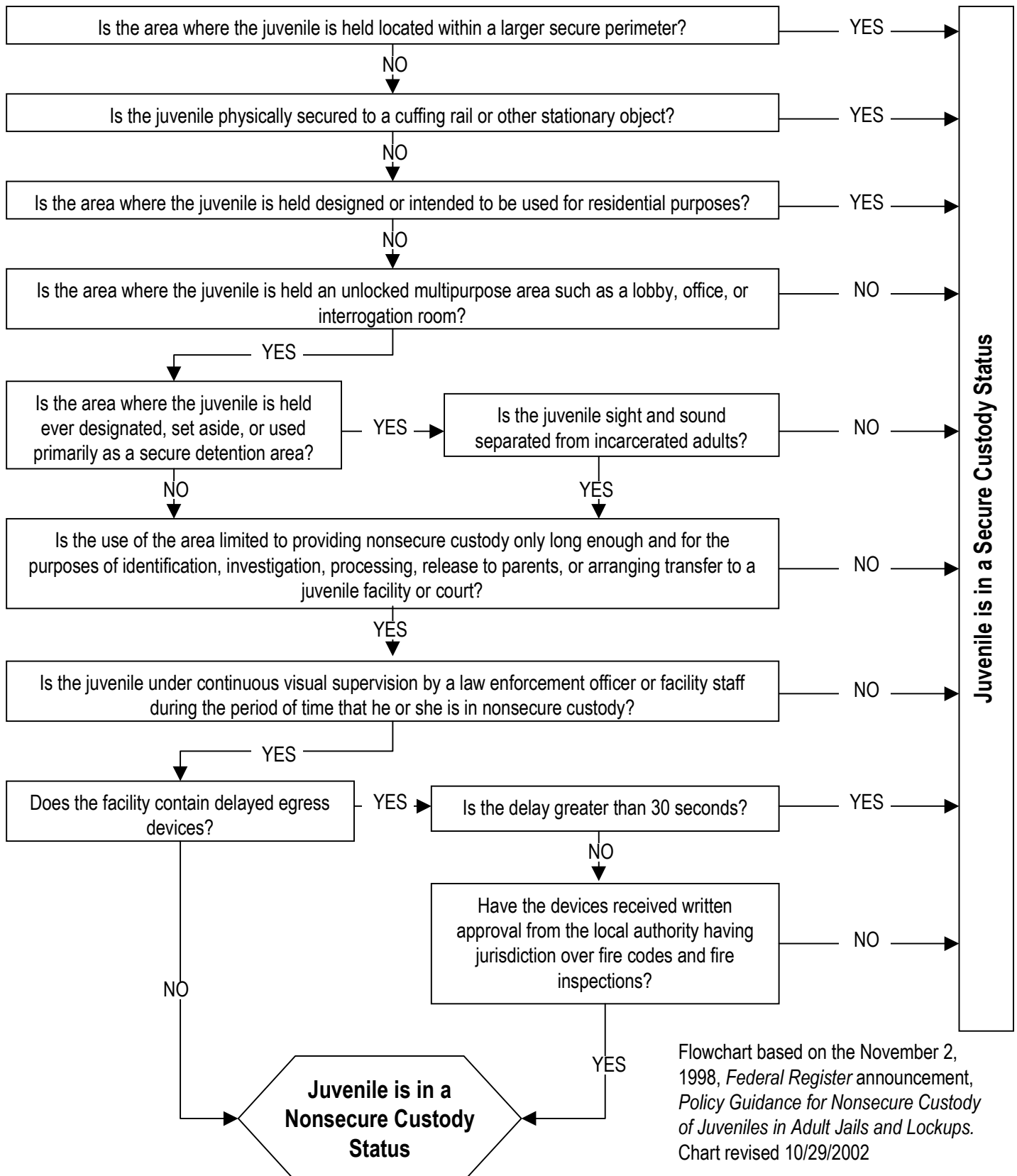
inspections in the area in which the facility is located. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.⁵

As examples, a juvenile placed in the following situations would be considered in a secure custody status:

- ◆ A juvenile placed in an unlocked room within the secure perimeter of an adult jail or lockup or a juvenile detention center.
- ◆ A juvenile handcuffed to a rail in an unlocked lobby area of an adult jail or lockup.
- ◆ A juvenile placed in a room that contains doors with unapproved delayed egress devices or approved delayed egress devices with a delay of more than 30 seconds.
- ◆ A juvenile being processed in a secure booking area where an unsecure booking area is available within a facility.
- ◆ A juvenile left in a secure booking area after being photographed and fingerprinted.
- ◆ A juvenile placed in a cell within an adult jail or lockup, whether or not the cell door is locked.

⁵ This is the maximum delay allowed by the National Fire Protection Association, as published in the *Life Safety Code Handbook*. It should be noted that for these devices to be used, the *Life Safety Code Handbook* dictates that other requirements must be met, such as the existence of an “approved supervised automatic fire detection system or approved supervised automatic sprinkler system.”

Flowchart To Determine if a Juvenile Is in a Secure or Nonsecure Custody Status in an Adult Jail or Lockup



Nonsecure Custody

A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility but not be in a secure detention or confinement status. OJJDP's *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups*⁶ states that **all** of the following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in an adult jail or lockup facility:

- ◆ The area where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room that is not designated, set aside or used primarily as a secure detention area or is not part of such an area,⁷ or, if a secure area, is used only for processing purposes;
- ◆ The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
- ◆ The use of the area is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;
- ◆ In no event can the area be designed or intended to be used for residential purposes; and
- ◆ The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

In addition, a juvenile placed in the following situations would be considered in a nonsecure status:

- ◆ A juvenile handcuffed to a nonstationary object. If the five criteria listed above are adhered to, handcuffing techniques that do not involve cuffing rails or other stationary objects are considered nonsecure.
- ◆ A juvenile being processed through a secure booking area. Where a secure booking area is all that is available and continuous visual supervision is provided throughout the booking process and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside

⁶ *Federal Register* 53, no. 212 (November 2, 1988):44367 (see appendix E).

⁷ An unlocked multipurpose area need not be considered part of a secure detention area if, while the juvenile is in the area, sight and sound separation from adult offenders is maintained at all times.

the booking area.

- ◆ A juvenile placed in a secure police car for transportation. The JJDP Act applies to secure detention facilities and secure correctional facilities; therefore, a juvenile placed in a police car for transportation would be in a nonsecure status.
- ◆ A juvenile placed in a nonsecure runaway shelter but prevented from leaving because of staff restricting access to exits. A facility may be nonsecure (i.e., staff secure) if physical restriction of movement or activity is provided solely through facility staff.
- ◆ A juvenile placed in a room that contains doors with delayed egress devices that have been approved in writing (including a specification of the maximum time delay allowed) by the authority having jurisdiction over fire codes and fire inspections in the area in which the facility is located and that comply with the egress delay established by the authority having jurisdiction over fire codes and fire inspections. In no case shall this delay exceed 30 seconds (see footnote 5 on page 7).

2.3 Compliance With Deinstitutionalization of Status Offenders

Prohibition on Secure Holding

Adult jails and lockups cannot hold status offenders, nonoffenders, alien juveniles, or civil-type juvenile offenders in a secure manner at any time. These juveniles may be detained in a nonsecure area of an adult jail or lockup for processing while awaiting transportation to a nonsecure shelter care facility or a juvenile detention center or while waiting release to a parent or guardian.

Youth Handgun Safety Act Exception

The Youth Handgun Safety Act (18 U.S.C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this Act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x) or a similar state law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar state law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the state's annual monitoring report.

Monitoring for Deinstitutionalization of Status Offenders

Adult jails and lockups should keep records of every juvenile who enters the facility. For status offenders, nonoffenders, alien juveniles, and civil-type juvenile offenders, the records should indicate if the juvenile was held securely or nonsecurely. If such a juvenile is held in a secure manner at any time, this hold would count as a violation of both DSO and jail removal. If held in a secure manner and not sight and sound separated from adult detainees while being held securely, the result would be a violation of DSO, separation, and jail removal.

2.4 Compliance With Jail Removal

Prohibition and Exceptions to the Secure Holding of Juveniles

The JJDP Act states that “no juvenile shall be detained or confined in any jail or lockup for adults....” There are three exceptions to this requirement:

- ◆ A 6-hour hold exception for alleged delinquent offenders.
- ◆ An exception for alleged delinquent offenders in rural areas if certain criteria are met.
- ◆ An exception for juveniles waived or transferred to a criminal court.

Six-Hour Hold Exception

OJJDP regulations allow for a 6-hour “grace period” that permits the secure detention in an adult jail or lockup of those juveniles accused of committing criminal-type offenses (i.e., offenses that would be a criminal offense if committed by an adult). Under this exception, the juvenile cannot have sight or sound contact with adult inmates during the time the juvenile is in a secure custody status in the adult jail or lockup. The 6 hours can be used in the following circumstances:

- ◆ An accused delinquent could be detained for up to 6 hours for the purposes of processing or release or transfer to a juvenile facility. Any holding of juveniles should be limited to the absolute minimum time necessary to complete these purposes, not to exceed 6 hours. An accused or adjudicated delinquent could be detained for up to 6 hours before a court appearance and up to an additional 6 hours after a court appearance, but any hold of an adjudicated delinquent that is not related to a court appearance is a violation of jail removal.

The following is noted about this exception:

- ◆ The 6-hour time periods cannot be combined to extend the time frame. For example, a juvenile cannot be detained for 4 hours before and 7 hours after the court appearance.
- ◆ Once the juvenile has been placed in a secure custody status and the 6-hour period has begun,

the facility cannot temporarily take the juvenile out of a secure custody status and begin the 6-hour time period again. For example, if a juvenile was placed in a secure custody status for 4 hours, then was taken to a nonsecure interview room for 1 hour, then was returned to a secure custody status for 2 hours, the total time to report for the jail removal provision is 7 hours and would be a violation of the 6-hour limit.

- ◆ A status offender, nonoffender, alien juvenile, or civil-type juvenile offender cannot be securely detained for any length of time in an adult jail or lockup.
- ◆ Adjudicated delinquents cannot be held for any length of time in adult jails or lockups as a disposition.
- ◆ A juvenile may not be transferred to a jail or lockup from a juvenile detention center for disciplinary reasons.
- ◆ Sight and sound separation from adult offenders must be maintained at all times pursuant to the separation requirement.

Removal (Rural) Exception⁸

OJJDP regulations implement a statutory “rural” exception, allowing the temporary detention beyond the 6-hour limit of juveniles accused of delinquent offenses who are awaiting an initial court appearance with 48 hours (excluding weekends and holidays).

It is important to note that the rural exception does not apply to status offenders. Status offenders may not be held for any length of time in an adult jail or lockup.

All of the following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained in an adult jail or lockup under the rural exception:

- ◆ The geographic area having jurisdiction over the juvenile must be outside a metropolitan statistical area (i.e., qualify as a “rural” area) as defined by the Office of Management and Budget;
- ◆ A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the state and approved by OJJDP;
- ◆ The adult jail or lockup must have been certified by the state to provide for the sight and

⁸ Although cited in regulations as the “removal exception,” this provision is more commonly referred to as the “rural exception” and for the purposes of this manual will continue to be referred to as the rural exception.

sound separation of juveniles and adult inmates;

- ◆ There is in effect in the state a policy that requires individuals who work with both juveniles and adult inmates in collocated facilities to have been trained and certified to work with juveniles;
- ◆ The state must provide documentation that conditions listed above have been met. In addition, the state must have received prior approval from OJJDP to use the rural exception.⁹ OJJDP strongly recommends that jails and lockups that incarcerate juveniles provide youth-specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception.

If all of the above conditions are met, a juvenile awaiting an initial court appearance may be detained for the following time periods:

- ◆ Up to 48 hours (excluding weekends and holidays), or
- ◆ If the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed 48 hours) delay is excusable; or
- ◆ If the facility is located where conditions adverse to safety exist (e.g., severe, life-threatening weather conditions that do not allow for reasonably safe travel), the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

These extended time periods cannot be used after the initial court appearance. After the initial court appearance, the 6-hour exception applies and the juvenile could be held only for up to 6 hours prior to and 6 hours after a court appearance.

Transfer or Waiver Exception

If criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup. The jail and lockup removal requirement does not apply to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or to juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges. Note that waiver or transfer and the filing of

⁹ 28 CFR 31.303(f)(4)(i)(v)

criminal felony charges does not transform a juvenile into an adult. Therefore, such a juvenile can be detained (or confined after conviction) in a juvenile facility and commingled with juvenile offenders until that juvenile reaches the state's age of majority, at which time, he or she must be separated from the juvenile population within 6 months.

2.5 Compliance With Separation

Juveniles Shall Not Have Contact With Adult Inmates

Separation must be achieved in all secure areas of the facility. Accused or adjudicated delinquent offenders, status offenders, and nonoffenders cannot have contact with adult inmates, including inmate trustees. Contact is defined to include any physical or sustained sight or sound contact. Sight contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between adult inmates and juvenile offenders.

Sight and sound separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. Brief and inadvertent or accidental contacts between juvenile offenders in a secure custody status and adult inmates in secure nonresidential areas of the facility do not count as violations.

Where a secure booking area is all that is available, continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status and separation would not apply during this time. Once the booking process has been completed, the juvenile must be separated immediately from adult inmates.

In accordance with current OJJDP policy and proposed regulation, the state must assure that no juvenile offender shall enter under public authority, for any amount of time, into a secure setting or secure section of an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g., Shock Incarceration or Scared Straight). If violations are found to exist, the state shall submit to OJJDP a description of its plan, procedure, and timetable for assuring that requirements of this section will be met beginning after October 1, 2003.

Administrative Transfers

Adjudicated juvenile offenders cannot be reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A state is not prohibited from placing or transferring an accused or adjudicated delinquent who reaches the state's age of full criminal responsibility to an adult

facility when required or authorized by state law. However, an administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult inmates, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited.

Transferred or Waived Juveniles

A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders. This is due to the fact that such a juvenile is not an accused or adjudicated *delinquent* (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding). Likewise, an adult held in an adult jail or lockup for a delinquency proceeding (generally related to a crime committed before reaching the age of full criminal responsibility) can be held securely in an adult jail or lockup because the adult is not a juvenile alleged to be or found to be delinquent. Both types of individuals can be placed wherever the legislature or courts, where authorized, deem appropriate.

2.6 Facility Reporting Requirements

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(15) of the JJDP Act requires that states have an adequate system of monitoring for compliance with the core protections. As part of this system, facilities must collect data on juveniles held and report the data to the state. In addition, the state must conduct regular onsite visits to monitor all adult jails and lockups and verify reported data.

To demonstrate compliance with the JJDP Act, all adult jails and lockups must report the following:

- ◆ Dates covered by the reporting period, as defined by the state monitoring agency.
- ◆ Whether the facility held any juveniles in a secure custody status¹⁰ during the reporting period. If no juveniles were held, the remaining reporting items do not apply for this reporting period.

¹⁰ For the purposes of reporting on the adult jail and lockup removal and separation requirements, only holding those juveniles who are under the age of the state age of majority and who are held in violation of the JJDP Act are considered violations. In most states, this age is 18. However, 13 states have a lower age of majority. For example, if a state's age of majority was 16, only those juveniles under the age of 16 that were held in an adult jail or lockup in excess of 6 hours would be reported as violations. Because a 17-year-old in such a state can still be a nonoffender or commit status offenses, this exception does not apply to the DSO requirement, as status offenders and nonoffenders are prohibited from being held securely in an adult jail or lockup for any length of time even though the person may be above the state's age of majority.

- ◆ The total number of accused or adjudicated status offenders (including valid court order violators, youth held in accordance with the Interstate Compact on Juveniles, and alien juveniles) and nonoffenders securely detained for any length of time.
- ◆ The total number of accused juvenile criminal-type offenders held securely for any length of time for purposes other than identification, investigation, processing, release, transfer to court, or transfer to a juvenile facility following initial custody.
- ◆ The total number of accused juvenile criminal-type offenders held securely in excess of 6 hours (including those held in excess of 6 hours pursuant to the rural exception).
- ◆ The total number of accused or adjudicated juvenile criminal-type offenders held securely in excess of 6 hours prior to or following a court appearance or for any length of time not related to a court appearance.
- ◆ If the state has received approval to use the rural exception, the following must be reported for those adult jails or lockups located in areas where the rural exception applies:
 - ▶ The total number of juveniles accused of a criminal-type offense who were held in excess of 6 hours but for less than 48 hours;
 - ▶ The total number of juveniles accused of a criminal-type offense who were held in excess of 48 hours but not for more than an additional 48 hours because of conditions of distance or lack of ground transportation; and
 - ▶ The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not for more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel.
- ◆ The total number of juveniles not separated from adult criminal offenders, including inmate trustees.

Note: To gather data for the disproportionate minority contact requirement, the state should request the race and/or ethnicity of each juvenile offender brought to the facility.

Summary of JJDP Act: Adult Jails and Lockups	
	Adult Jail and Lockup
Accused juvenile status offender, nonoffender, civil-type juvenile offender, or alien juvenile	Secure holding prohibited.
Adjudicated juvenile status offender	Secure holding prohibited.
Status offender accused of violating a valid court order	Secure holding prohibited.
Status offender adjudicated for violating a valid court order	Secure holding prohibited.
Accused juvenile delinquent	Secure hold limited to up to 6 hours for identification, processing, release to parents, or transfer to a juvenile facility or 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.
Adjudicated juvenile delinquent*	Secure hold limited to up to 6 hours for identification, processing, release to parents, or transfer to a juvenile facility or 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.
Juvenile transferred to criminal court and charged with a misdemeanor	Secure hold limited to 6 hours prior to and 6 hours after a court appearance. Separation is not required.
Juvenile transferred to criminal court and convicted of a misdemeanor	Secure holding prohibited.
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding.
Adult accused of or convicted of a crime	No restrictions on holding.

* See "Removal (Rural) Exception" in section 2.4.

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Section 3

Monitoring for Compliance: Juvenile Facilities

3.1 Definitions Related to Juvenile Facilities

Secure juvenile detention center or correctional facility. A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders. Many states use the term “training school” for juvenile correctional facilities.

Secure custody. As used to define a detention or correctional facility, this term includes residential facilities that include construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures.

Staff secure facility. A staff secure facility is as a residential facility which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein; which may establish reasonable rules restricting entrance to and egress from the facility; and in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

Facilities that contain doors with delayed egress devices that have received written approval by the authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is located are also considered to be staff secure. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.¹¹

¹¹ This is the maximum delay allowed by the National Fire Protection Association, as published in the *Life Safety Code Handbook*. It should be noted that for these devices to be used, the *Life Safety Code Handbook* dictates that other requirements must be met, such as the existence of an “approved supervised automatic fire detection system or approved supervised automatic sprinkler system.”

Status offender. A status offender is a juvenile who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- ◆ Truancy.
- ◆ Violations of curfew.
- ◆ Runaway.
- ◆ Underage possession and/or consumption of tobacco products.
- ◆ Underage alcohol offenses. These offenses are considered to be status offenses, even though state law or local ordinance may classify them as delinquent offenses.¹²

Nonoffender. A nonoffender is a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Civil-type juvenile offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

3.2 Compliance With Deinstitutionalization of Status Offenders

Secure Holding of Status Offenders—Prohibitions and Exceptions

The JJDP Act provides that status offenders, nonoffenders, and civil-type offenders not be detained or confined in secure detention or correctional facilities. There may be rare situations, however, where short-term secure custody of accused status offenders may be necessary. For example, detention in a juvenile facility for a brief period of time prior to formal juvenile court action for investigative purposes, for identification purposes, or for the purpose of allowing return to the juvenile's parents or guardian may be necessary. Detention for a brief period of time under juvenile court authority may also be necessary in order to arrange for appropriate shelter

¹² With regard to underage alcohol offenses, in many states it is a criminal offense for any person 18 to 20 years old to consume or possess alcoholic beverages. Because this time period is limited (i.e., 3 years) and the age at which this is not a criminal offense is very broad (i.e., after the age of 21), these alcohol offenses must be classified as status offenses if committed by a juvenile. However, criminal alcohol offenses that apply to all adults (e.g., public intoxication) may be classified as delinquent offenses.

care placement. Therefore, OJJDP regulations allow a facility to hold an accused status offender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and legal holidays, immediately following an initial court appearance. Status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to delinquent offenders for their failure to appear.

Status offenders cannot be securely detained after adjudication unless all of the conditions of the VCO Exception (see below) are met. Juveniles who have committed a violation of the Youth Handgun Safety Act or are held in accordance with the Interstate Compact on Juveniles as enacted by the state are excluded from the DSO requirement in total.

Youth Handgun Safety Act Exception

The Youth Handgun Safety Act (18 U. S. C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this Act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x), or a similar state law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar state law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the state's annual monitoring report.

Out-of-State Runaways

Out-of-state runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another state in response to a want, warrant, or request from a jurisdiction in the other state or pursuant to a court order must be reported as violations of the deinstitutionalization of status offenders requirement. Juveniles held pursuant to the Interstate Compact on Juveniles enacted by the state are excluded from the DSO requirements in total.

Federal Wards

The JJDP Act states that “ juveniles . . . who are aliens shall not be placed in secure detention facilities or secure correctional facilities.” Federal wards held beyond 24 hours in state and local secure detention and correctional facilities pursuant to a written contract or agreement with a federal agency and for the specific purpose of affecting a jurisdictional transfer, or appearance as a material witness, or for return to their lawful residence or country of citizenship must be

reported as violations of the deinstitutionalization of status offenders requirement.¹³

Exception for Status Offenders Who Violate a Valid Court Order (VCO Exception)

The VCO Exception provides that adjudicated status offenders found to have violated a valid court order may be securely detained in a juvenile detention or correctional facility. The JJDP Act of 2002 defines a valid court order as a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to such order; and who received, before the issuance of the order, the full due process rights guaranteed to such juvenile by the Constitution of the United States.¹⁴ It is important to note that status offenders who violate a valid court order cannot be held securely in an adult jail or lockup for any length of time.

For the VCO Exception to apply, the Act requires that the following actions occur when a status offender is taken into custody for violating a valid court order:

- ◆ An appropriate public agency must be promptly notified that the juvenile is held in custody for violating the order;
- ◆ Not later than 24 hours during which the juvenile is held, an authorized representative of the agency shall interview, in person, the juvenile; and
- ◆ Not later than 48 hours during which the juvenile is held:
 - ▶ The representative must submit an assessment to the court that issued the order regarding the immediate needs of the juvenile; and
 - ▶ The court shall conduct a hearing to determine whether there is reasonable cause to believe that the juvenile violated the order and the appropriate placement of the juvenile pending disposition of the alleged violation.

In the event the court orders the juvenile detained pending the disposition, the disposition hearing should be held as soon as possible while still allowing reasonable time for the court to obtain additional information to enable it to make a disposition in the best interest of the status offender.

Because the JJDP Act does not provide substantive legal authority to a state, where state legislation currently prohibits the secure confinement of status offenders who violate a valid court order, legislative amendment would be required if a state wanted to have the ability to

¹³ Because state and local governments do not have jurisdiction over these juveniles, OJJDP will exclude these violations if their presence creates a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

¹⁴ 42 U.S.C. 5603 Sec 103 (16).

confine status offenders who violate valid court orders.

Although some states' common laws or statutes allow the courts to use traditional contempt power, failure to appear, or probation violation to upgrade a status offender to a delinquent offender, a status offender held for violating a valid court order remains a status offender, and the VCO Exception process must be followed, unless the violation itself is a delinquent act as defined under federal law.

To demonstrate compliance with the process governing the VCO Exception, the state must report in its annual compliance monitoring report the total number of status offenders held in any secure detention or correctional facility pursuant to the VCO Exception. The state must have a system in place to verify whether court orders used to hold status offenders in juvenile detention centers comply with the conditions listed above. At a minimum, the state must randomly verify 10 percent of all adjudicated status offenders held securely because of violating a valid court order. If a system is not in place to monitor compliance with the conditions and process governing the VCO Exception, all uses of the VCO Exception must be reported as violations of DSO.

3.3 Compliance With Jail Removal

A collocated facility is a juvenile facility that is located in the same building as an adult jail or lockup or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered related when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water, and sewer). Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the collocated facility criteria (see section 4).

3.4 Compliance With Separation

Accused or adjudicated delinquent offenders, status offenders, and nonoffenders cannot have contact with adult inmates, including inmate trustees. Contact is defined to include any physical or sustained sight and sound contact. Sight contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between adult inmates and juvenile offenders.

It is important to note that the separation requirement prohibits a state from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. For example, an adult could not be transferred to a juvenile detention center to alleviate overcrowding in an adult jail.

Inmate trustees who perform maintenance or other duties at a juvenile detention center or juvenile training school must be sight and sound separated from the juvenile detainees at all times. Separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. The state

must monitor all juvenile detention facilities and juvenile training schools for separation.

Transferred, Waived, or Certified Youth

A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or juvenile detention center with other juveniles who are under the jurisdiction of the juvenile court. This is not a violation of the separation requirement because the youth is not a juvenile “alleged to be or found to be delinquent” (he or she has been charged with a criminal, not a delinquent act) and the youth is not an “adult inmate.” Once the youth reaches the state’s age of majority, he or she must be separated from the juvenile population within 6 months.

Adults Under the Jurisdiction of the Juvenile Court

An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile training school. For example, if a 17-year-old juvenile committed a burglary and was charged with this delinquent offense at age 18, he or she could be held in a juvenile detention center. This does not violate the separation requirement because the 18-year-old adult has not been “convicted of a crime or is awaiting trial on criminal charges.”

3.5 Facility Reporting Requirements

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(15) of the JJDP Act requires that states have an adequate system of monitoring for compliance with the core protections. As part of this system, facilities must collect data on juveniles held and report the data to the state. The state must conduct regular onsite visits to monitor the facilities and verify reported data. To demonstrate compliance with the JJDP Act, secure juvenile detention or correctional facilities must report the following:

- ◆ Dates covered by the reporting period, as designated by the state monitoring agency.
- ◆ The total number of nonoffenders held in a secure detention or correctional facility for any length of time.
- ◆ The total number of accused status offenders, out-of-state runaways not held pursuant to the Interstate Compact for Juveniles and federal wards, held securely for longer than 24 hours (exclusive of weekends and legal holidays) prior to an initial court appearance and for an additional 24 hours (exclusive of weekends and legal holidays) immediately following an initial court appearance. Exclude those juveniles held pursuant to the VCO Exclusion provision, pursuant to the Youth Handgun Safety Act or a similar state law or the Interstate Compact on Juveniles adopted by the state.
- ◆ The total number of adjudicated status offenders and nonoffenders, including out-of-State

runaways not held pursuant to the Interstate Compact for Juveniles and federal wards, held securely for any length of time, excluding those held pursuant to the VCO Exception provision or pursuant to the Youth Handgun Safety Act or the Interstate Compact on Juveniles adopted by the state

- ◆ The total number of juveniles not separated from adult criminal offenders.
- ◆ The state monitoring agency is also required to collect the following:
 - ▶ The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act.
 - ▶ Total number of federal wards.

Summary of the JJDP Act: Juvenile Detention or Correctional Facilities	
	Secure Juvenile Detention or Juvenile Correctional Facility
Nonoffenders	Secure holding prohibited.
Accused juvenile status offender	Secure hold limited to 24 hours prior to and 24 hours after an initial court appearance (excluding weekends and holidays).
Adjudicated juvenile status offender	Secure holding prohibited.
Status offender accused of violating a valid court order	Juvenile must be interviewed by an appropriate public agency within 24 hours of being placed in secure custody. The court must receive an assessment from the public agency and the juvenile must have a reasonable cause hearing within 48 hours of being placed in secure custody. Time limits exclude weekends and holidays.
Status offender adjudicated for violating a valid court order	No restrictions on holding.
Accused juvenile delinquent	No restrictions on holding.
Adjudicated juvenile delinquent	No restrictions on holding.
Juvenile transferred to criminal court and charged with a misdemeanor	No restrictions on holding.
Juvenile transferred to criminal court and convicted of a misdemeanor	No restrictions on holding.
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding.
Adult accused of or convicted of a criminal offense	Secure holding prohibited.

Section 4

Monitoring for Compliance: Other Facilities

4.1 Collocated Facilities

Classifying Facilities

States must determine whether or not a facility in which juveniles are detained or confined is an adult jail, adult lockup, or a secure juvenile detention center or correctional facility. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups.¹⁵ Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the four criteria listed in this section. A facility adhering to the four criteria would qualify as a separate secure juvenile detention center or correctional facility for the purpose of monitoring for compliance with DSO, jail removal, and separation.

Definitions of Collocated Facilities and Related Complex of Buildings

Collocated facilities. Collocated facilities are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds.

Related complex of buildings. A related complex of buildings is two or more buildings that share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc.

Criteria for Collocated Facilities

Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

- ◆ The facility must ensure separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and adult inmates in the facility. Separation can be achieved architecturally or through time phasing of common use nonresidential areas;

¹⁵ See section 2 for exceptions.

- ◆ The facility must have separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility that provides for a full range of separate program services. No program activities may be shared by juveniles and adult inmates. Time phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns;
- ◆ If the state will use the same staff to serve both the adult and juvenile populations, there is in effect in the state a policy that requires individuals who work with both juveniles and adult inmates to be trained and certified to work with juveniles; and
- ◆ In states that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no state standards or licensing requirements, OJJDP encourages states to establish administrative requirements that authorize the state to review the facility's physical plant, staffing patterns, and programs in order to approve the colocated facility based on prevailing national juvenile detention standards.

The state must determine that the four criteria are fully met. It is incumbent upon the state to make the determination through an onsite facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth above.

Collocated juvenile detention facilities approved by the state and concurred with by OJJDP before December 10, 1996, may be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence or against the regulatory criteria set forth in this section. It is up to the state monitoring agency to determine which criteria will be used. Facilities approved on or after December 10, 1996, must be reviewed against the criteria set forth in this section. A monitoring checklist has been developed by OJJDP for each of the criteria. The use of either checklist is optional and may be found on OJJDP's Web site (ojjdp.ncjrs.org/compliance).

Annual Onsite Review Requirement

An annual onsite review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the state agency administering the JJDP Act Formula Grants Program. The purpose of the annual review is to determine if compliance with the criteria listed above is being maintained.

Collocated Facility Reporting Requirements

States must report annually to the Administrator of OJJDP on the results of monitoring for DSO, jail removal, and separation. In addition, the state must conduct annual onsite visits to monitor collocated facilities for the JJDP Act and to verify reported data.

Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the four criteria listed in this section and would follow the same reporting requirements as listed for adult jails and lockups in section 2. A collocated juvenile facility adhering to the four criteria would qualify as a separate secure juvenile detention center or correctional facility and would follow the reporting requirements listed for juvenile facilities in section 3.

4.2 Court Holding Facilities

A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings or other court proceedings. Court holding facilities, where they do not detain individuals overnight (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups.

A status offender or delinquent offender placed in a court holding facility is exempt from the deinstitutionalization requirement if the facility meets the criteria listed in the definition above. Facilities, however, remain subject to the separation requirements of the JJDP Act. The separation requirements pertain to status offenders and nonoffenders, and alleged or adjudicated delinquent offenders.

It is important to note that court holding facilities impose an inherent or practical time limitation in that juveniles must be brought to and removed from the facility during the same judicial day.

The state must monitor court holding facilities to ensure they continue to meet the definition and purpose listed above. A court holding facility that does not meet the definition and purpose listed above must be monitored as an adult jail or lockup.

4.3 Adult Prisons

Status Offenders

The JJDP Act prohibits the placement of status offenders and nonoffenders in secure detention facilities or secure correctional facilities. Holding status offenders or nonoffenders in an adult prison¹⁶ would be an immediate violation of the JJDP Act.

Delinquent Offenders

The JJDP Act states that “no juvenile shall be detained or confined in any jail or lockup for adults....” Therefore, the JJDP Act limits the facilities from which juveniles must be removed to adult jails or lockups. The requirement does not apply to adult prisons. Therefore, holding a delinquent offender in an adult prison is not a violation of the jail removal requirement.

It is important to note that the JJDP Act states that “juveniles alleged to be or found to be delinquent shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or awaiting trial on criminal charges.” Therefore, complete separation must be provided between juvenile delinquent offenders and adult inmates.

Transferred, Waived, or Certified Juveniles

The JJDP Act states that “no juvenile shall be detained or confined in any jail or lockup for adults....” Therefore, it is not a violation of jail removal to hold a juvenile in an adult prison if that juvenile has been formally waived or transferred to criminal court and criminal felony or misdemeanor charges have been filed.

Furthermore, a juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders pursuant to the separation requirements of the JJDP Act. This is due to the fact that such a juvenile is not alleged to be or found to be delinquent (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding).

4.4 Nonsecure Community-Based Programs and Facilities

Nonsecure, community-based programs or facilities are exempt for the purposes of monitoring for compliance with DSO, jail removal, and separation. The core protections only apply to secure facilities. For example, a nonsecure residential substance abuse treatment program could include

¹⁶ The term “adult prison” includes any institution used for the postconviction confinement of adult criminal offenders, including work camps and secure facilities located in the community.

both juvenile delinquent or status offenders and adult offenders who are under a sentence for the conviction of a crime.

The state should monitor nonsecure facilities that hold juveniles to verify their nonsecure status. If the facility's status were to change and become secure, the facility must be monitored as an adult jail or lockup or other secure institution if it holds both juveniles and adult offenders. If it holds only juveniles (status offenders and delinquent offenders), it must be monitored as a secure juvenile detention center or correctional facility.

4.5 Secure Mental Health Treatment Units

A juvenile committed to a mental health facility under a separate state law governing civil commitment of individuals for mental health treatment or evaluation would be considered outside the class of juvenile status offenders and nonoffenders. For monitoring purposes, this distinction does not permit placement of status offenders or nonoffenders in a secure mental health facility where the court is exercising its juvenile status offender or nonoffender jurisdiction. The state must ensure that juveniles alleged to be or found to be juvenile status offenders or nonoffenders are not committed under state mental health laws to circumvent the intent of DSO.

There are no restrictions to placing delinquent offenders in a mental health treatment unit. The separation requirement does not apply if the juvenile and adults are held in a mental health facility solely because of a mental health civil commitment.

Summary of the JJDP Act: Other Facilities					
	Shelter, Group Home, or Other Nonsecure or Staff Secure Facility	Adult Prison	Court Holding Facility (must meet definition)	Secure Mental Health Facility	Collocated Juvenile Facility
Accused juvenile status offender or nonoffender	No restrictions on holding.	Secure holding prohibited.	No restrictions if separated from adults.	<p>Status offenders or nonoffenders may not be placed in a secure mental health facility where the court is exercising its juvenile status offender or nonoffender jurisdiction.</p> <p>There are no restrictions on holding any juvenile in a secure mental health facility if the juvenile is held there for the purpose of a mental health civil commitment.</p> <p>The separation requirement does not apply if the juvenile and adults are held in a mental health facility due solely to a mental health civil commitment.</p>	<p>A collocated juvenile facility adhering to the collocated facility criteria qualifies as a separate secure juvenile detention center or correctional facility and has the same holding restrictions as secure juvenile facilities.</p> <p>Absent compliance with the collocated facility criteria, juvenile facilities collocated with adult facilities are considered adult jails or lockups and have the same holding restrictions as adult jails and lockups.</p>
Adjudicated juvenile status offender	No restrictions on holding.	Secure holding prohibited.	No restrictions if separated from adults.		
Status offender accused of violating a valid court order	No restrictions on holding.	Secure holding prohibited.	No restrictions if separated from adults.		
Status offender adjudicated for violating a valid court order	No restrictions on holding.	Secure holding prohibited.	No restrictions if separated from adults.		
Accused juvenile delinquent	No restrictions on holding.	No restrictions if separated from adults.	No restrictions if separated from adults.		
Adjudicated juvenile delinquent	No restrictions on holding.	No restrictions if separated from adults.	No restrictions if separated from adults.		
Juvenile transferred to criminal court and charged with a misdemeanor	No restrictions on holding.	No restrictions on holding.	No restrictions on holding.		
Juvenile transferred to criminal court and convicted of a misdemeanor	No restrictions on holding.	No restrictions on holding.	No restrictions on holding.		
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding.	No restrictions on holding.	No restrictions on holding.		
Adult accused of or convicted of a criminal offense	No restrictions on holding.	No restrictions on holding.	No restrictions on holding.		

Section 5

State Monitoring of Facilities

5.1 Adequate System of Monitoring for Compliance

States participating in the JJDP Act must provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and nonsecure facilities to ensure that the core protections are met. The state must also provide annual reporting of the results of such monitoring to the Administrator of OJJDP. Although OJJDP holds the state agency implementing the Formula Grants program responsible for the monitoring effort and the validity of the monitoring report, the state agency may contract with a public or private agency to perform the monitoring function. If selecting another agency, the state must identify in its monitoring plan who the agency has authorized and/or contracted with to assist in the monitoring functions.

As part of an adequate system of monitoring facilities, the state must describe its plan, procedure, and timetable for monitoring. The plan must describe in detail each of the following tasks, including the identification of the specific agency responsible for each task:

- ◆ *Identification of the monitoring universe.* This refers to the identification of all facilities in the state which might hold juveniles pursuant to public authority. Every facility which has this potential, regardless of the purpose for housing juveniles, comes under the purview of the monitoring requirements. This also includes those facilities owned or operated by public and private agencies.
- ◆ *Classification of the monitoring universe.* This is the classification of all facilities in the state to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.
- ◆ *Inspection of facilities.* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. All facilities classified as secure detention or correctional facilities, jails, lockups, and other facilities must have periodic, onsite inspections to determine compliance with the core protections. The inspection must include:
 - ▶ A review of the physical accommodations to determine whether it is a secure or nonsecure facility or whether adequate sight and sound separation between juvenile and adult offenders exists and.
 - ▶ A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with DSO, jail removal, and separation.

- ◆ *Data collection and data verification.* Data collection and reporting are required to determine whether facilities in the state are in compliance with the applicable requirements of DSO, jail removal, and separation. The length of the reporting period should be 12 months, but in no case less than 6 months. If reporting 6 months of data, the data must be projected for a full year in a statistically valid manner. If the data is self-reported by the facility or is collected and reported by an agency other than the state agency receiving federal grant funds, the plan must describe a statistically valid procedure used to verify the reported data.

As part of its monitoring system, the state must provide a description of the barriers it faces in implementing and maintaining a monitoring system to report the level of compliance with DSO, jail removal, and separation requirements and its plans to overcome such barriers.

5.2 Native American Tribes

Monitoring Facilities on Native American Reservations

The sovereign authority of Native American tribes with regard to civil and criminal jurisdiction over acts committed on a reservation varies from state to state and, in some states, from tribe to tribe within a state. Where a Native American tribe exercises jurisdiction over juvenile offenders through an established tribal court and operates correctional institutions for juvenile and adult offenders and these activities are not subject to state law (i.e., the functions are performed under the sovereign authority of the tribal entity), the state cannot mandate tribal compliance with the core protections. Therefore, where the state has no authority to regulate or control the law enforcement activities of a sovereign Native American tribal reservation, facilities that are located on such reservations are not required to be included in the monitoring universe.

Grants to Native American Tribes

During the 1988 reauthorization, the JJDP Act was amended to require that a portion of each state's Formula Grant award be made available to fund programs of tribes that perform law enforcement functions. While the Act specifies a minimum level of funding, states may provide any amount in excess of the minimum amount required to accomplish the objectives of the JJDP Act within the tribe. Native American tribes that receive Formula Grant funds as part of the Native American Pass-Through requirement of the JJDP Act must comply with the core protections, and facilities on the reservation must be monitored by the state. In addition, if the tribe wishes to establish eligibility for Community Prevention Grant funds, the tribe must be in compliance with the core protections and facilities on the reservation must be monitored.

5.3 Out-of-State Juveniles

Where there is interstate placement of juveniles and a juvenile is held in a secure facility in violation of the JJDP Act, the receiving state must include the violation in its annual monitoring report. Although only the receiving state must report the violation, it should be noted that neither

state is meeting the intent of the core protections. In addition, a unit of local government cannot establish eligibility for Title V Community Prevention Grant funds if the jurisdiction is in compliance because of sending juveniles to another jurisdiction in violation of the JJDP Act. Juveniles may be held in accordance with the Interstate Compact on Juveniles as enacted by the state.

5.4 Enforcement Mechanism

A state's monitoring system must describe procedures established for receiving, investigating, and reporting complaints of violations of DSO, jail removal, and separation requirements. This should include both legislative and administrative procedures and sanctions.

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Section 6

Reporting Requirements

6.1 Annual Compliance Monitoring Report Requirement

In order to receive its full fiscal year allocation of Formula Grants program funds, a state must first demonstrate compliance with DSO, jail removal, separation, and disproportionate minority confinement core protections. Compliance with the first three core protections is demonstrated through data provided in the state's annual Compliance Monitoring Report. Compliance with disproportionate minority confinement is determined by information provided in the state's Comprehensive 3-Year Plan and subsequent 3-Year Plan Updates.

Eligibility for Formula Grant awards is generally based on data contained in the Compliance Monitoring Report that is due by December 31 of the calendar year prior to the beginning of the fiscal year for which funds are being requested. For example, in most cases, eligibility for FY 2003 Formula Grants was based on states' 2001 Compliance Monitoring Reports. This timeframe provides a state that has identified a compliance problem with sufficient time to request technical assistance, develop a corrective action plan, and take the necessary steps to provide OJJDP with more current data demonstrating compliance, thereby maximizing the state's opportunity to receive its full fiscal year allocation.

6.2 Deadline To Submit Annual Report

OJJDP's Formula Grant Regulation requires states to submit compliance information annually. The reporting period should provide 12 months of data but shall not provide less than 6 months of data. The regulation further requires that the report be submitted to the Administrator of OJJDP by December 31 of each year. Recognizing that states use various data collection procedures, OJJDP has historically recognized a variety of data collection periods including calendar years, the federal fiscal year (10/1–9/30), or the state fiscal year. To accommodate states that use a calendar year data collection period, OJJDP allows an additional 3 months for the verification of data and submission of the report by March 31 of each year. States that fail to adhere to the requirement for the timely submission of this data face a restriction on the drawdown of funds for active Formula Grants program awards.

6.3 Reporting Requirements

Deinstitutionalization of Status Offenders

To demonstrate the extent of compliance with the DSO requirement, the annual report must include, at a minimum, the following information for the current reporting period:

- ◆ Dates covered by the current reporting period;
- ◆ Total number of public and private secure detention and correctional facilities, the total number reporting, and the number inspected onsite;
- ◆ The total number of accused status offenders and nonoffenders, including out-of-state runaways and federal wards, held in any secure detention or correctional facility for longer than 24 hours (not including weekends or holidays), excluding those held pursuant to the VCO Exclusion or pursuant to the Youth Handgun Safety Act or a similar state law. A juvenile who violates this statute, or a similar State law, is excepted from the deinstitutionalization of status offenders requirement;
- ◆ The total number of accused status offenders (including valid court order violators, out-of-state runaways, and federal wards, but excluding Youth Handgun Safety Act violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for any length of time;
- ◆ The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the VCO Exclusion or pursuant to the Youth Handgun Safety Act or pursuant to the Interstate Compact on Juveniles;
- ◆ The total number of status offenders held in any secure detention or correctional facility pursuant to the VCO Exclusion; and
- ◆ The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act.

Jail Removal

To demonstrate the extent of compliance with jail removal, the report must include, at a minimum, the following information for the current reporting period:

- ◆ Dates covered by the current reporting period;
- ◆ The total number of adult jails in the state and the number inspected onsite;

- ◆ The total number of adult lockups in the state and the number inspected onsite;
- ◆ The total number of adult jails holding juveniles during the past 12 months;
- ◆ The total number of adult lockups holding juveniles during the past 12 months;
- ◆ The total number of accused juvenile¹⁷ criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities in excess of 6 hours (including those held pursuant to the rural exception);
- ◆ The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities for less than 6 hours for purposes other than identification, investigation, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;
- ◆ The total number of alleged or adjudicated juvenile criminal-type offenders held securely in adult jails or lockups and unapproved collocated facilities in excess of 6 hours prior to or following a court appearance or for any length of time not related to a court appearance;
- ◆ The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and unapproved collocated facilities for any length of time;
- ◆ The total number of adult jails, lockups, and unapproved collocated facilities in areas meeting the rural exception, including a list of such facilities and the county or jurisdiction in which each is located;
- ◆ The total number of juveniles accused of a criminal-type offense who were held in excess of 6 hours but for less than 48 hours in adult jails, lockups, and unapproved collocated facilities pursuant to the rural exception;

¹⁷ For the purposes of reporting on the adult jail and lockup removal and separation requirements, only holding those juveniles who are under the age of the state age of majority and who are held in violation of the JJDP Act are considered violations. In most states, this age is 18. However, 13 states have a lower age of majority. For example, for reporting on this item, if a state's age of majority is 16, only those juveniles under the age of 16 that were held in an adult jail or lockup in excess of 6 hours would be reported as violations. Because a 17-year-old in such a state can still be a nonoffender or commit status offenses, this exception does not apply to the DSO requirement, and these individuals should be included in "the total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and unapproved collocated facilities for any length of time" even though the person may be above the state's age of majority.

- ◆ The total number of juveniles accused of a criminal-type offense who were held in excess of 48 hours but not for more than an additional 48 hours in adult jails, lockups, and unapproved collocated facilities pursuant to the rural exception due to conditions of distance or lack of ground transportation; and
- ◆ The total number of juveniles accused of a criminal-type offense who were held in excess of 48 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and unapproved collocated facilities in areas meeting the rural exception.

Separation

To demonstrate the extent of compliance with Section 223(a)(12) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

- ◆ Dates covered by the current reporting period;
- ◆ The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months and the number inspected onsite;
- ◆ The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;
- ◆ The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults;
- ◆ The total number of state-approved juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup, including a list of such facilities;
- ◆ The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been approved by the state, including a list of such facilities; and.
- ◆ The total number of juveniles detained in collocated facilities not approved by the State who were not sight and sound separated from adult inmates.

6.4 Technical Assistance Reporting Tools

OJJDP has developed two technical assistance tools to help states submit annual compliance monitoring reports: a paper form and a computer spreadsheet.

Paper Format

This form requests all of the information to be submitted to fulfill the reporting requirements listed above. If using the paper form, the state should not delete or modify any of the text. The latest version of this form, revised August 1995, must be used. This form can be found in appendix J.

Spreadsheet Format

OJJDP has developed a template to use on the Microsoft Excel spreadsheet program. This template requests all of the information to be submitted to fulfill the reporting requirements listed above. The form may be downloaded at the OJJDP compliance monitoring Web site at <http://www.ojjdp.ncjrs.org/compliance>.

States that are considering using this form should note the following:

- ◆ The electronic form is a template only—to use it the state must first have the Microsoft Excel program, version 97 or greater.
- ◆ OJJDP cannot provide technical assistance or training on using Microsoft Excel. Those not familiar with Microsoft Excel should use the paper format.
- ◆ The template cannot and should not be modified. If modifications are necessary because of differences in the manner in which a state monitors for compliance, the state should use the paper format to fully explain those differences.
- ◆ Although it is provided as an electronic template, the form should not be submitted electronically. It must be printed and then sent to OJJDP with all of the requested attachments.
- ◆ The state should check for template updates and enhancements before completing its annual monitoring report. New versions of the template can be found at the OJJDP Web site on compliance monitoring at <http://www.ojjdp.ncjrs.org/compliance>.

6.5 Monitoring Report Exemption

States that have been determined by the OJJDP Administrator to have achieved full compliance with DSO, jail removal, and separation requirements and that wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator that demonstrates the following:

- ◆ The state provides for an adequate system of monitoring jails, law enforcement lockups, and detention facilities, to enable an annual determination of state compliance with Section 223(a)(11)(A), (12), and (13) of the JJDP Act;
- ◆ State legislation has been enacted which conforms to the requirements of Section 223(a)(11)(A), (12), and (13) of the JJDP Act; and
- ◆ The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:
 - ▶ Authority for enforcement of the statute is assigned;
 - ▶ Timeframes for monitoring compliance with the statute are specified; and
 - ▶ Adequate procedures are set forth for enforcement of the statute and the imposition of sanctions for violations.

6.6 Annual Report to the Governor and Legislature

The JJDP Act requires the State Advisory Group in each state participating in the Formula Grants program to submit annual recommendations to the state's Governor and legislature regarding the state's compliance with the core protections and with progress relating to the State Challenge Grants program. This report is an excellent opportunity for the state agency and the State Advisory Group to make recommendations and report how the state is addressing the core protections.

Section 7

Standards for Demonstrating Compliance

7.1 Grant Funds Affected by Compliance

If a state demonstrates compliance with the core protections, it is eligible for Formula Grant funds. Moreover, units of local government and federally recognized tribes that are in compliance with the core protections are eligible for Title V Community Prevention Grant funds.

Formula Grant Funds

The state must demonstrate the extent to which each of the four core protections are met. If the state fails to demonstrate the required level of compliance by the end of the fiscal year for which funds are allocated, the state's Formula Grants allotment will be reduced by 20 percent for each such failure. Further, the noncompliant state must agree to expend 50 percent of the state's allocation for that year to achieve compliance with the core requirement(s) with which it is not in compliance. However, if the OJJDP Administrator makes a discretionary determination that the state has substantially complied with the requirement(s) for which there is noncompliance and that the state has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, then the restriction on expenditures will not apply. In order for such a determination to be made, the state must demonstrate that it has diligently carried out the plan approved by OJJDP, demonstrated significant progress toward full compliance, submitted a plan based on an assessment of current barriers to DMC, and provided an assurance that added resources will be expended, from Formula Grants or other fund sources, to achieve compliance.

Where a state's allocation is reduced, the amount available for planning and administration and the required pass-through allocation, other than the State Advisory Group set-aside, will be reduced because they are based on the reduced allocation.

Community Prevention Grant Funds—State Eligibility

A state out of compliance with the JJDP Act may still be awarded Community Prevention Grants if there are units of general local government eligible to receive grant awards based upon their compliance with the core protections.

Community Prevention Grant Funds—Unit of Local Government Eligibility

For a unit of general local government or federally recognized tribe to be eligible to apply to the state for Title V Community Prevention Grant funds, the unit must be certified by the State Advisory Group as in compliance with the four core protections. The specific unit of general local government that is seeking certification must demonstrate compliance with the four core protections. Therefore, a State Advisory Group is not allowed to certify a city's compliance based on the overall compliance status of the county. The unit of general local government must obtain this certification prior to applying for an award of funds. In determining eligibility, the State Advisory Group must certify only those units of general local government that are within the de minimis parameters provided in sections 7.3, 7.4, and 7.5 and base this determination on the locality's most current census data.

The compliance certification applies to all facilities operated by or contracted by the unit of general local government. This certification is not limited to a specific catchment area within the boundaries of the unit of general local government. Therefore, the certification must also include any facility that the unit of general local government operates, contracts for, or uses inside or outside its boundaries. However, the certification does not apply to facilities operated or controlled by other governmental units within the local governmental boundaries that are not used by the local government.

In order for a unit of general local government to be in compliance with the disproportionate minority contact (DMC) core requirement, the State Advisory Group must certify that the unit of general local government is cooperating in data gathering and analysis to determine if DMC exists. If DMC is found to exist within the boundaries or jurisdiction of the unit of general local government, the unit must be making an adequate effort toward addressing, or assisting the state to address, this issue. The level of cooperation and commitment must be satisfactory to support efforts to achieve the goals of the DMC requirement.

After awards have been made to units of local government, the state must ensure that these communities continue to comply with the four core protections. Title V awards to units of local government must be in 12-month increments for periods of up to 3 years. Continuation funding for each of the 12-month increments is based on the unit of local government's satisfactory performance and continued compliance with the four core protections. As part of its Community Prevention Grants program, the state must have a plan which will identify and discontinue all Community Prevention Grants funding to units of local government that fall out of compliance.

7.2 Deadline for Establishing Eligibility for Formula Grant Funds

The deadline date for a state to demonstrate eligibility for its annual allocation of Formula Grant funds is March 31 or 60 days after OJJDP officially notifies states of their Formula Grant allocation, whichever is later. Demonstrating eligibility includes submitting a complete grant application by this deadline and submitting a monitoring report and other documentation that

establishes compliance with the core protections of the JJDP Act. If a state cannot meet the deadline for good cause, it may apply for an extension to OJJDP in writing by the application due date. The extension will not be continued past the end of the fiscal year for which the state has applied for funds. The funds for which the state could not demonstrate eligibility will not be held past the end of the fiscal year for which the state applied for funds, nor will the entire award be held past the end of the fiscal year for which the state applied for funds in order to provide additional time to establish eligibility.

7.3 Demonstrating Compliance: Deinstitutionalization of Status Offenders

Full compliance with DSO is achieved when a state has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities. The legal concept of de minimis, meaning “the law cares not for small things,” is generally applied where small, insignificant or infinitesimal matters are at issue. OJJDP has developed de minimis standards for States that have not removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities. If states that have not achieved 100 percent can demonstrate full compliance with de minimis exceptions pursuant to the OJJDP policy criteria,¹⁸ the state will be determined to be in compliance with DSO. The OJJDP policy establishes three criteria to be applied in making a determination of whether a state has demonstrated full compliance with the deinstitutionalization of status offenders requirement. The three criteria, A, B, and C, are listed below.

Criterion A: The extent of noncompliance is insignificant or of slight consequence in terms of the total juvenile population in the state.

In applying Criterion A, the following four standards¹⁹ will be used:

- ◆ States which have an institutionalization rate less than 5.8 per 100,000 population will be considered to be in full compliance with the de minimis exceptions and will not be required to address Criteria B and C.

¹⁸ *Federal Register* 46, no.6 (January 9,1981):2567–2568 (see appendix C).

¹⁹ To establish these numerical standards, in 1980 OJJDP calculated the average rate of DSO violations in eight states (i.e., two states from each of the four Bureau of Census regions). The eight states selected by OJJDP in 1980 were those having the smallest institutionalization rate per 100,000 population and which also had an adequate system of monitoring for compliance. By applying this procedure and utilizing the information provided in the eight states’ most recently submitted monitoring reports,,OJJDP determined that the eight states’ average annual rate was 17.6 incidences of status offenders and nonoffenders held per 100,000 population under 18. In computing the standard deviation from the mean of 17.6, it was determined that a rate of 5.8 per 100,000 was one standard deviation below the mean and 29.4 was one standard deviation above the mean.

- ◆ States whose rate falls between 5.8 and 17.6 per 100,000 population will be eligible for a finding of full compliance with de minimis exceptions if they adequately meet Criteria B and C.
- ◆ States whose rate is above 17.6 but does not exceed 29.4 per 100,000 will be eligible for a finding of full compliance with de minimis exceptions only if they fully satisfy Criteria B and C.
- ◆ States which have a placement rate in excess of 29.4 per 100,000 population are presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above that level is considered to represent an excessive and significant level of status offenders and nonoffenders held in juvenile detention or correctional facilities.

OJJDP will consider requests from such states where the state demonstrates exceptional circumstances which account for the excessive rate. Exceptional circumstances are limited to situations where, but for the exceptional circumstance, the state's institutionalization rate would be within the 29.4 rate established above.

The following will be recognized for consideration as exceptional circumstances:

- ◆ Federal wards held under federal statutory authority in a secure state or local detention facility for the sole purpose of effecting a jurisdictional transfer, appearance as a material witness, or for return to their lawful residence or country of citizenship; and
- ◆ A state has recently enacted changes in state law which have gone into effect and which the state demonstrates can be expected to have a substantial, significant, and positive impact on the state's achieving full compliance with the deinstitutionalization requirement within a reasonable time.

In order to make a determination that a state has demonstrated exceptional circumstances under the first two items above, the state must have developed a separate and specific plan under Criterion C which addresses the problem in a manner that will eliminate the noncompliant instances within a reasonable time.

It is of critical importance that all states seeking a finding of full compliance with de minimis exceptions demonstrate progress toward full compliance annually in order to be eligible for a finding of full compliance with de minimis exceptions.

States may provide additional information that they deem relevant in determining the extent to which the number of noncompliant incidences is insignificant or of slight consequence. However, factors such as local practice, available resources, or organizational structure of local government will not be considered relevant by OJJDP in making this determination.

Criterion B: The extent to which the instances of noncompliance were in apparent violation of state law or established executive or judicial policy.

The following information must be provided in response to Criterion B and must be sufficient to make a determination as to whether the instances of noncompliance with DSO as reported in the state's monitoring report were in apparent violation of, or departures from, state law or established executive or judicial policy. OJJDP will consider this criterion to be satisfied by those states that demonstrate that all or substantially all of the instances of noncompliance were in apparent violation of, or departures from, state law or established executive or judicial policy. This is because such instances of noncompliance can more readily be eliminated by legal or other enforcement processes. The existence of such law or policy is also an indicator of the commitment of the state to the deinstitutionalization requirement and to achieving and maintaining future 100 percent compliance. Therefore, information should also be included on any newly established law or policy which can reasonably be expected to reduce the state's rate of institutionalization in the future.

- ◆ A brief description of the noncompliant incidents must be provided which includes a statement of the circumstances surrounding the instances of noncompliance. (For example: Of 15 status offenders/nonoffenders held in juvenile detention or correctional facilities during the 12-month period for state X, 3 were accused status offenders held in jail in excess of 24 hours, 6 were accused status offenders held in detention facilities in excess of 24 hours, 2 were adjudicated status offenders held in a juvenile correctional facility, 3 were accused status offenders held in excess of 24 hours in a diagnostic evaluation facility, and 1 was an adjudicated status offender placed in a mental health facility pursuant to the court's status offenders jurisdiction.) Do not use actual names of juveniles.
- ◆ Describe whether the instances of noncompliance were in apparent violation of state law or established executive or judicial policy. A statement should be made for each circumstance discussed in item 1 above. A copy of the pertinent/applicable law or established policy should be attached. (For example: The three accused status offenders were held in apparent violation of a state law which does not permit the placement of status offenders in jail under any circumstances. Attachment "X" is a copy of this law. The six status offenders held in juvenile detention were placed there pursuant to a disruptive behavior clause in our statute which allows status offenders to be placed in juvenile detention facilities for a period of up to 72 hours if their behavior in a shelter care facility warrants secure placement. Attachment "X" is a copy of this statute. A similar statement must be provided for each circumstance.)

Criterion C: The extent to which an acceptable plan has been developed which is designed to eliminate the noncompliant incidents within a reasonable time, where the instances of noncompliance either (1) indicate a pattern or practice, or (2) appear to be consistent with state law or established executive or judicial policy, or both.

If the state determines that the instances of noncompliance (1) do not indicate a pattern or practice, and (2) are inconsistent with and in apparent violation of state law or established executive or judicial policy, then the state must explain the basis for this determination. In such case no plan would be required as part of the request for a finding of full compliance.

The following must be addressed as elements of an acceptable plan for the elimination of noncompliant incidents that will result in the modification or enforcement of state law or executive or judicial policy to ensure consistency between the State 's practices and the JJDP Act deinstitutionalization requirements.

- ◆ If the instances of noncompliance are sanctioned by or consistent with state law or executive or judicial policy, then the plan must detail a strategy to modify the law or policy to prohibit noncompliant placement so that it is consistent with the federal deinstitutionalization requirement.
- ◆ If the instances of noncompliance are in apparent violation of state law or established executive or judicial policy, but amount to or constitute a pattern or practice rather than isolated instances of noncompliance, the plan must detail a strategy which will be employed to rapidly identify violations and ensure the prompt enforcement of applicable state law or executive or judicial policy.
- ◆ The plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and nonoffenders in compliance with DSO. It must include a specific strategy to eliminate instances of noncompliance through statutory reform, changes in facility policy and procedure, modification of court policy and practice, or other appropriate means.

If OJJDP makes a finding that a state is in full compliance with de minimis exceptions based, in part, upon the submission of an acceptable plan under Criteria C above, the state will be required to include the plan as part of its current or next submitted formula grant plan as appropriate. OJJDP will measure the state's success in implementing the plan by comparison of the data in the next monitoring report indicating the extent to which noncompliant incidences have been eliminated.

Determinations of full compliance status will be made annually by OJJDP following the submission of the annual monitoring report. Any state reporting less than 100 percent compliance in any annual monitoring report would, therefore, be required to follow the above procedures in requesting a finding of full compliance with de minimis exceptions.

7.4 Demonstrating Compliance: Jail Removal

Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of jail removal. As with the deinstitutionalization of status offenders requirement, OJJDP has developed de minimis standards for states that have not achieved 100 percent removal of juveniles from adult jails and lockups. Full compliance with de minimis exceptions is achieved when a state demonstrates that it has met the numerical or substantive de minimis standards below:

Numerical de Minimis Standard

To comply with this standard the state must demonstrate that each of the following two requirements has been met:

- ◆ The incidents of noncompliance reported in the state's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the state;²⁰ and
- ◆ An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

Any state whose prior full compliance status is based on having met the numerical de minimis standard must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100 percent) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

²⁰ Under an exception to the numerical de minimis standard, when the annual rate for a state exceeds 9 incidents of noncompliance per 100,000 juvenile population, the state will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the state has recently enacted changes in state law which have gone into effect and which the state demonstrates can reasonably be expected to have a substantial, significant, and positive impact on the state's achieving full (100 percent) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

Substantive de Minimis Standard

To comply with this standard the state must demonstrate that each of the following requirements has been met:

- ◆ State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of jail removal;
- ◆ All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from the state law, rule, or policy referred to in the preceding item;
- ◆ The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;
- ◆ Existing mechanisms for the enforcement of the State law, rule, or policy referred to in the first item of this list are such that the instances of noncompliance are unlikely to recur in the future; and
- ◆ An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in the preceding item.

Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the annual monitoring report. Any state reporting less than full (100 percent) compliance in its annual monitoring report may request a finding of full compliance with the substantive or numerical de minimis exceptions. The request may be submitted in conjunction with the monitoring report, or as soon thereafter as all information required for a determination is available, or it may be included in the annual State plan and application for the state's Formula Grant award.

7.5 Demonstrating Compliance: Separation

Compliance with Section 223(a)(12) has been achieved when a state can demonstrate that:

- ◆ The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(12); or
- ◆ The instances of noncompliance reported in the last submitted monitoring report do not indicate a pattern or practice but rather constitute isolated instances; and
 - ▶ Where all instances of noncompliance reported were in violation of or departure from state law, rule, or policy that clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(12), existing enforcement

mechanisms are such that the instances of noncompliance are unlikely to recur in the future; or

- ▶ An acceptable plan has been developed to eliminate the noncompliant incidents.

Summary of Standards for Demonstrating Compliance

Deinstitutionalization of Status Offenders	
Rate per 100,000 juveniles	Criteria for Compliance
0.0	The state has demonstrated full compliance.
0.1 to 5.7	The state has demonstrated full compliance with de minimis exceptions.
5.8 to 17.6	The state is eligible for a finding of compliance with de minimis exceptions if it <u>adequately meets</u> two criteria: (a) noncompliant incidents violated state law, and(b) an acceptable plan has been developed that is designed to eliminate the noncompliant incidents.
17.7 to 29.4	The state is eligible for a finding of compliance with de minimis exceptions if it <u>fully satisfies</u> two criteria:(a) noncompliant incidents violated state law, and(b) an acceptable plan has been developed that is designed to eliminate the noncompliant incidents.
29.5 and greater	The state is presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above this level is considered to represent an excessive and significant level of status offenders and nonoffenders held in juvenile detention or correctional facilities.

Jail Removal	
Rate per 100,000 Juveniles	Criteria for Compliance
0.0	The state has demonstrated full compliance.
0.1 to 9.0	The state is eligible for the numerical de minimis exception if the state has developed an acceptable plan to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.
9.1 and greater	The State is eligible for the substantive de minimis exception if the state meets five criteria: (a) there are recently enacted changes in state law that are expected to have a significant impact on the state's achieving full compliance; (b) all instances of noncompliance were in violation of state law; (c) the instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; (d) there are existing mechanisms to effectively enforce state law; and (e) an acceptable plan has been developed to eliminate the noncompliant incidents.

Separation	
Number of Violations	Criteria for Compliance
0	The state has demonstrated full compliance.
1 and greater	The state is eligible for a finding of compliance if the instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances and one of the following criteria is satisfied: (a) instances of noncompliance were in violation of state law and existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future, or (b) an acceptable plan has been developed to eliminate the noncompliant incidents.

Section 8

Definitions

Adult inmate. An adult inmate is an individual who has reached the age of full criminal responsibility under applicable state law and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense (42 U.S.C. 5603 Sec 103 (26)).

Adult jail. A locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than 1 year (28 CFR 31.304(m)).

Adult lockup. Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged (28 CFR 31.304(n)).

Civil-type juvenile offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

Collocated facilities. Collocated facilities are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds. (42 U.S.C. 5603 Sec 103 (28)).

Contact (DMC). See Disproportionate Minority Contact.

Contact (sight and sound). Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders (28 CFR 31.303(d)).

Court holding facility. A court holding facility is a secure, nonresidential facility, that is not an adult jail or lockup, that is used to temporarily detain persons immediately before or after court proceedings.

Criminal-type juvenile offender. A juvenile offender who has been charged with or adjudicated for conduct that would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (28 CFR 31.304(g)).

Delayed egress device. A device that precludes the use of exits for a predetermined period of time.

Disproportionate Minority Contact (DMC). As amended by the JJDP Act of 2002, the concept of disproportionate minority confinement has been broadened to address the disproportionate numbers of minority youth who come into contact with the juvenile justice system at any point. The 2002 Act requires states to “address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system.” (42 U.S.C. 5633 Sec. 223(a)(22))

Facility. A place, an institution, a building or part thereof, set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies (28 CFR 31.304(c)).

Juvenile offender. An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender (28 CFR 31.304(f)).

Juvenile who is accused of having committed an offense. A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court (28 CFR 31.304(d)).

Juvenile who has been adjudicated as having committed an offense. A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender (28 CFR 31.304(e)).

Lawful custody. The exercise of care, supervision, and control over a juvenile offender or nonoffender pursuant to the provisions of the law or of a judicial order or decree (28 CFR 31.304(j)).

Nonoffender. A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile (28 CFR 31.304(i)). These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Nonsecure custody. A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status. The November 2, 1988, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups*; *Notice of Final Policy*, states that the following policy

criteria, if satisfied, will constitute nonsecure custody of a juvenile in an adult jail or lockup facility:

- ◆ The area(s) where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designated, set aside, or used as a secure detention area or is not part of such an area, or, if a secure area, is used only for processing purposes;
- ◆ The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
- ◆ The use of the area(s) is limited to providing nonsecure custody only long enough for and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;
- ◆ In no event can the area be designed or intended to be used for residential purposes; and
- ◆ The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

In addition, a juvenile placed in the following situations would be considered in a nonsecure status:

- ◆ If certain criteria are met, a juvenile handcuffed to a nonstationary object: Handcuffing techniques that do not involve cuffing rails or other stationary objects are considered nonsecure if the five criteria listed above are adhered to.
- ◆ If certain criteria are met, a juvenile being processed through a secure booking area: Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.
- ◆ A juvenile placed in a secure police car for transportation: The JJDP Act applies to secure detention facilities and secure correctional facilities, so a juvenile placed in a secure police car for transportation would be in a nonsecure status.
- ◆ A juvenile placed in a nonsecure runaway shelter, but prevented from leaving due to staff restricting access to exits: A facility may be nonsecure if physical restriction of movement or activity is provided solely through facility staff.

Other individual accused of having committed a criminal offense. An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction (28 U.S.C. 31.304(k)).

Other individual convicted of a criminal offense. An individual, adult or juvenile, who has been convicted of a criminal offense by a court exercising criminal jurisdiction (28 U.S.C. 31.304(l)).

Reasonable cause hearing. In the context of the VCO Exception, the reasonable cause hearing (also referred to as a “probable cause hearing” or “preliminary hearing”) is a court proceeding held by a judge to determine whether there is sufficient cause to believe that a juvenile status offender accused of violating a valid court order has violated such an order and to determine the appropriate placement of such juvenile pending disposition of the violation alleged. (42 U.S.C. 5633 Sec. 223(a)(23)(C)(ii)).

Related complex of buildings. Related complex of buildings means 2 or more buildings that share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc. (42 U.S.C. 5603 Sec 103 (28)).

Secure custody. As used to define a detention or correctional facility, this term includes residential facilities that include construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff (28 CFR 31.304(b)).

Secure juvenile detention center or correctional facility. A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders. Many states use the term “training school” for juvenile correctional facilities.

Staff secure facility. A staff secure facility may be defined as a residential facility (1) which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein; (2) which may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

Status offender. A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (28 CFR 31.304(h)). The following are examples of status offenses:

- ◆ Truancy.

- ◆ Violations of curfew.
- ◆ Runaway.
- ◆ Underage possession and/or consumption of tobacco products.
- ◆ Underage alcohol offenses. These offenses are considered status offenses, even though state or local law may consider them delinquent offenses.

Valid court order. A valid court order is a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to the order, and who received, before the issuance of the order, the full due process rights guaranteed to such juvenile by the Constitution of the United States. (42 U.S.C. 5603 Section 103(16)).